

FILED

FEB 16 2017

IN THE SUPREME COURT OF IOWA

CLERK SUPREME COURT

**IN THE MATTER OF THE
CLIENT SECURITY COMMISSION**

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2016 ANNUAL REPORT

This report of the Client Security Commission is submitted as required by Iowa Court Rule 39.4 for the period January 1, 2016 through December 31, 2016.

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INTRODUCTION

The Client Security Trust Fund (the fund) and the Client Security Commission (the Commission) were activated on January 1, 1974, with a \$20,000.00 grant from the Iowa State Bar Foundation. That grant since has been repaid. On December 1, 2016 the Commission filed a certificate with the Court regarding the sufficiency of the fund, under the provisions of Iowa Court Rule 39.6(3). As of December 1, 2016, the actual cash balance of the fund totaled \$1,754,114.75, and the unrestricted balance totaled \$1,318,614.61. Because the unrestricted fund balance totaled more than \$900,000.00, a special assessment will not be payable during 2017 by members of the bar of Iowa who have paid assessments in the total sum of at least \$200.00 to the Client Security Trust Fund in past years. A regular assessment will be payable during 2017 as provided by Iowa Court Rule 39.6(2).

THE COMMISSION

Chapter 39 of the Iowa Court Rules provides for the Commission and the fund. Iowa Court Rule 39.1 provides for the appointment of seven members to the Commission, two of whom are not to be lawyers. During the period covered by this report, the non-lawyer members of the Commission were Kenneth H. Boeke of Des Moines and Ann Powers of Fort Dodge. The lawyer members of the Commission during the period covered by this report were the Honorable David L. Christensen of Ellston, the Honorable Annette J. Scieszinski of Albia, Joel Vos of Sioux City, Jennifer A. Clemens-Conlon of Dubuque, and JoAnn L. Barten of Ames.

At the fall 2016 meeting, Jennifer A. Clemens-Conlon was elected Chair, JoAnn L. Barten was elected Vice Chair, and Kenneth H. Boeke was elected Treasurer.

RULE CHANGES AFFECTING THE COMMISSION

During 2015 and 2016, the Court adopted changes in Division III (Professional Regulation) of the Iowa Court Rules that affect operations of the Commission. Unpaid fees, costs, and penalties owed the Office of Professional Regulation or any Iowa court by an attorney will be collected as part of the annual client security reporting process. This fee collection was implemented in the current year filing season so final data cannot yet be provided. However, it is notable that following the first notification that unpaid fees would be required to be paid during the report filing season, attorneys wishing to make payment made such a great number of calls to the Clerk of Court that its telephone system crashed.

Also adopted in 2015 was a new rule directing that the costs of non-routine trust account audits will be assessed to the attorney when conducted based on specified causes. Assessment to the attorney will occur only if the audit shows the account was not in substantial compliance with trust account rules. The procedures of this rule are currently being finalized and the results of the implementation of the rule will be detailed in next year's annual report.

Finally, effective December 25, 2017, all active practitioners will be required to complete a mandatory short form designation of an assisting attorney

or entity as part of the annual questionnaire filed with the Client Security Commission. The second tier of succession planning under the rule consists of an optional but encouraged written plan that the planning attorney creates. The Office of Professional Regulation will implement the mandatory portion of the annual Client Security report in the 2018 reporting season.

CLAIMS EXPERIENCE

Claims Considered

During 2016, the Commission authorized payment on four requests for reimbursement, totaling \$57,924.00. The claims approved during 2016 are summarized as follows:

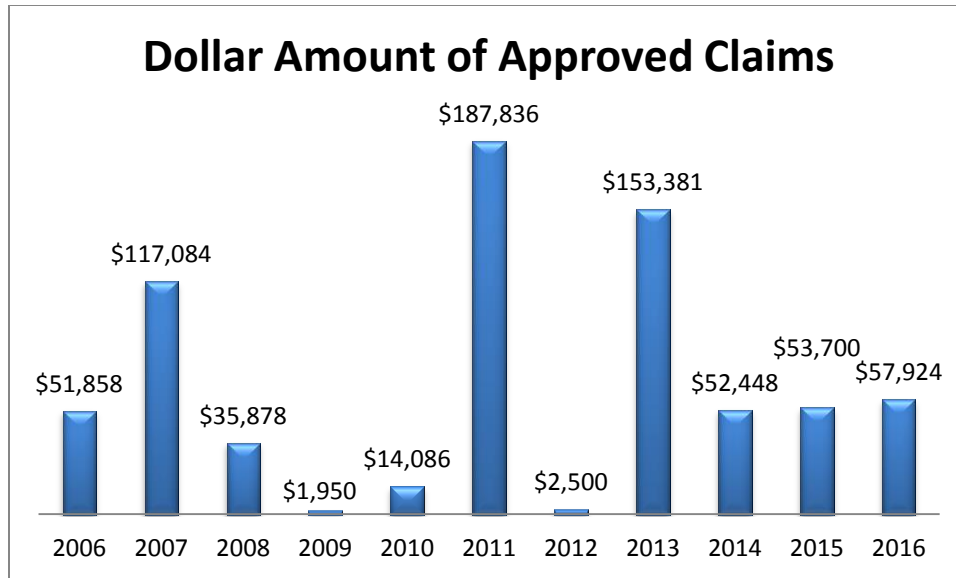
The Commission authorized payment on one claim in the amount of \$2,000.00 based on the actions of lawyer Nyaradzai M. Kadenge. Mr. Kadenge's license to practice law in Iowa has been suspended.

The Commission authorized payment on one claim in the amount of \$50,000.00 based on the actions of lawyer David B. Moore. Mr. Moore is deceased.

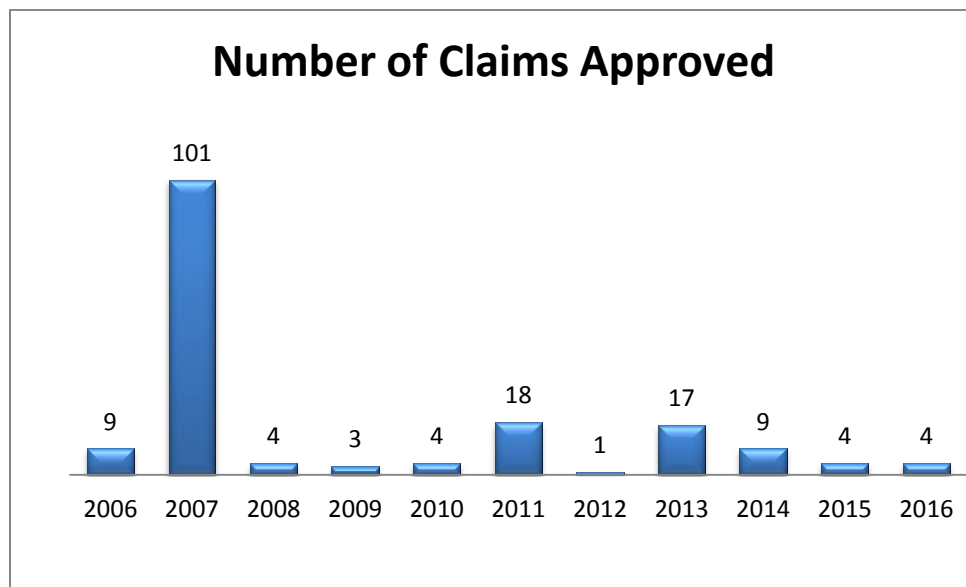
The Commission authorized payment on one claim in the amount of \$1,000.00 based on the actions of lawyer Aaron J. Thomas. Mr. Thomas' license to practice law in Iowa has been revoked.

The Commission authorized payment on one claim in the amount of \$4,924.00 based on the actions of lawyer Richard C. Mendez. Mr. Mendez's license to practice law in Iowa has been suspended.

As shown in the following chart, the total amount of money approved for claims during 2016 exceeds the claims experience in most prior years, with only three of the past ten years having a higher claim approval amount:



As for the number of claims approved by the Commission during 2016, it is on par with the claims experience in most prior years.¹



¹ It should be noted that the 101 claims approved in 2007 were for just 4 attorneys, one of whom was the subject of 97 claims. But for that individual, there would have been only four claims that year.

Twenty-four requests for reimbursement were pending before the Commission on January 1, 2016. During calendar year 2016, thirteen new requests for reimbursement were filed. No previously closed requests for reimbursement were reopened. The disposition of these thirty-seven pending and new matters during 2016 was as follows:

<u>Disposition</u>	<u>Number</u>
Payment authorized	4
Administratively dismissed	1
Reimbursement denied	2
Pending on December 31, 2016	30

Commission rules in effect during calendar year 2016 for conduct before January 1, 2014, provided \$50,000.00 as the maximum reimbursement one claimant may receive from the fund, and \$150,000.00 as the maximum aggregate amount payable from the fund because of the dishonest conduct of any one attorney. For claims arising from lawyer conduct on or after January 1, 2014, the commission rules provided \$100,000.00 as the maximum reimbursement one claimant may receive from the fund, and \$300,000.00 as the maximum aggregate amount payable from the fund because of the dishonest conduct of any one attorney. The total sum requested for the claims pending on December 31, 2016, as limited by per claim and per lawyer caps, was \$433,080.00.

Substantially all of the claims denied in recent years failed to qualify for reimbursement because they did not arise from the dishonest conduct of a member of the bar of Iowa while acting as an attorney or fiduciary. The Commission is not authorized to approve requests for payment arising out of

voluntary joint ventures with lawyers or the personal lending of money to lawyers. The Client Security Trust Fund is not intended and is not authorized to provide protection against malpractice or to resolve disputes about the amount of a lawyer's charges.

The Commission continues to observe the policy that if lawyers embezzle they should be prosecuted to the full extent of the law. The responsibility for prosecution in such cases generally remains with authorities in the county of the lawyer's residence, occasionally assisted by the Area Prosecutions office of the Attorney General of Iowa. In accordance with governing regulations, when information is received by the Commission indicating an apparent violation of the criminal laws by a lawyer, such information is reported to the Court for such action as the Court deems appropriate.

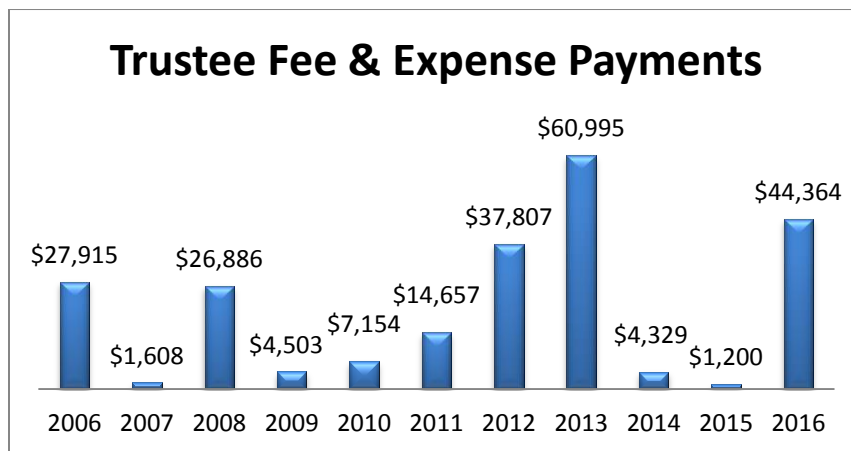
No reimbursements were recovered during calendar year 2016 on prior claims paid by the fund. The Commission will continue its policy of seeking reimbursement of paid claims when circumstances warrant.

Trustee Compensation & Expenses

Iowa Court Rule 34.17 provides for disability suspension pursuant to a sworn application on behalf of a county bar association or the Attorney Disciplinary Board, and requires the chief judge of the judicial district in which the attorney has been practicing to appoint a lawyer or lawyers to serve as trustee in connection with matters in progress in the office of the lawyer suspended under the rule. Iowa Court Rule 34.18 provides for appointment of a

trustee by the district chief judge upon application of a county bar association or the Attorney Disciplinary Board if a practicing lawyer has died or been suspended or disbarred from practice, provided reasonable necessity exists. Appointment of a trustee to inventory files, sequester client funds, and take other appropriate action to protect the interests of the clients and other affected persons helps identify and assists management of claims for reimbursement filed with the Commission.

Iowa Court Rules 34.17 and 34.18 also provide that a trustee may seek reasonable fees and reimbursement of costs in connection with these matters from the suspended attorney. If unsuccessful, the trustee may submit a fee and expense claim to the Commission. The Commission, in its sole discretion, determines the merits of the claim and the amount of any payment from the fund. Trustee claims for fees and expenses in the total amount of \$44,363.66 were authorized for payment from the fund during 2016. During prior years, payments have been authorized under Iowa Court Rules 34.17 and 34.18 as shown in the following table.



Reimbursement in the amount of \$586.19 was recovered during calendar year 2016 on prior trustee fees and expenses paid by the fund. The Commission will continue its policy of seeking reimbursement of paid trustee fees and expenses when circumstances warrant.

COMPLIANCE

As of December 31, 2016, 16,477 lawyers were licensed to practice law in Iowa, an increase of 396 lawyers from the previous year. Of these 16,477 licensed attorneys, 9,668 were eligible to engage in the practice of law in Iowa. The following table reflects the status of these 9,668 lawyers with the Commission based on Iowa Court Rules 39.6 and 39.7:

	2016	2015	Difference
Full Time	5,369	5,235	134
Part Time	1,312	1,379	(67)
Corporate	1,053	1,021	32
Government	1,329	1,347	(18)
Judge	265	271	(6)
New Attorney	204	293	(89)
Military Service	60	63	(3)
House Counsel	61	54	7
Emeritus	8	9	(1)
Multijurisdictional Practitioners	8	7	1
Foreign Legal Consultant	2	1	1

Those lawyers in retired status have received certificates of exemption based on their certification that they have now fully retired, are practicing law in a state other than Iowa, or are not engaged in the practice of law in Iowa. Lawyers in retired status are not required to file annual reports with the Commission, and are exempt from payment of assessments for the fund or annual fees for support of the disciplinary system.

During 2016, lawyers admitted within the past two years were exempt from payment of assessments into the fund. Lawyers in active duty military service status or emeritus status were also exempt from payment of assessments into the fund. Lawyers categorized as full-time practitioners, government employees, full-time corporate employees, judges, multijurisdictional practitioners, or part-time practitioners contributed an assessment of \$50.00 to the fund unless they had paid assessments totaling \$200.00. The majority of these lawyers previously had paid the full \$200.00 in assessments. House counsel and foreign legal consultants paid a \$200.00 assessment to the fund at the time their registration was approved.

Because the unrestricted fund balance totaled more than \$900,000.00 as of December 1, 2015², a regular assessment was payable during 2016 by members of the bar of Iowa who had paid assessments in the total sum of at

² If the unrestricted fund balance would have totaled less than \$900,000.00 (as it last did on December 1, 2014), a special assessment would have been payable by full-time and part-time practitioners, multijurisdictional practitioners, government employees, and judges who had paid assessments in the total sum of at least \$200.00 to the Client Security Trust Fund in prior years. House counsel, foreign legal consultants, lawyers in full-time military status, and emeritus attorneys are exempt from payment of a special assessment to the fund.

least \$200.00 to the Client Security Trust Fund in prior years. During 2016, lawyers who had paid assessments of at least \$200.00 to the fund in prior years and were classified as full-time practitioners or multijurisdictional practitioners contributed a regular assessment of \$50.00 to the fund. Lawyers who had paid assessments of at least \$200.00 to the fund in prior years and were categorized as government employees, full-time corporate employees, judges, or part-time practitioners also contributed a regular assessment of \$50.00 to the fund. House counsel, foreign legal consultants, lawyers in full-time military status, and emeritus attorneys were exempt from payment of a regular assessment to the fund.

During calendar year 2016, the licenses of ten attorneys were suspended by the Court for failure to comply with the reporting and fee payment provisions of chapter 39 of the Iowa Court Rules. Failure to file the required annual questionnaire and statement with the Commission by March 10th of the year resulted in payment of a late filing penalty ranging from \$25³ to \$200 under the Commission's rules by each of 212 lawyers during 2016.

ANNUAL FEE TO FINANCE DISCIPLINARY SYSTEM

In addition to providing indemnification for losses caused to the public by the dishonest conduct of members of the bar of this state, the fund also supports administration of the lawyer disciplinary system and other programs that impact

³ For most late filers, the minimum late filing penalty is \$100. A late fee of \$25 still occasionally is collected from lawyers reinstating from suspensions imposed when late filing fees were set at \$25.

the disciplinary system, including but not limited to the Iowa Lawyers Assistance Program.

As a condition to continuing membership in the bar, every bar member is required to pay to the Commission an annual fee as determined by the Court to finance the disciplinary system, unless exempt. The annual fee during 2016 was \$175.00. Annual fees received to finance the disciplinary system totaled \$1,626,275.00 during 2016. The fees received to finance the disciplinary system were expended to pay operating expenses of the Iowa Supreme Court Attorney Disciplinary Board, the Grievance Commission of the Supreme Court of Iowa, the Iowa Supreme Court Commission on the Unauthorized Practice of Law, and a portion of the operating expenses of the Iowa Lawyers Assistance Program. The annual fee to be paid by each attorney to support the attorney disciplinary system for calendar year 2017 is set at \$175.00.

The Commission has established separate bookkeeping records and accounts for funds received to finance the disciplinary system. A disciplinary fund checking account has been established for disciplinary operations. The annual fees received from attorneys to finance the disciplinary system are deposited in the investment account of the Commission as part of the online reporting system for lawyers, and then transferred to the disciplinary fund checking account. Funds deposited in the disciplinary fund checking account are diverted to interest-bearing certificates of deposit or a deposit savings account to the extent not necessary to support current operations of the entities supported by the annual fee.

AUDIT

The audit report prepared by Brooks Lodden, P.C., Certified Public Accountants, for the accounting period ending June 30, 2016, previously has been submitted to the Court. The financial report includes a section entitled *Management Discussion & Analysis*, which was prepared by Commission staff. Examination of the *Management Discussion & Analysis* is recommended in lieu of any separate analysis the Commission might provide regarding financial operations of the Commission.

The Commission continues to adhere to its longstanding investment philosophy of safety. The Commission's policy is to invest only in United States government or United States government-related securities or fully FDIC-insured brokered certificates of deposit. Commission funds otherwise are placed in deposit accounts covered by FDIC insurance or the Iowa public funds statute, Iowa Code chapter 12C.

OPERATIONS

Commission funds are deposited in accounts at Wells Fargo Bank, Des Moines, Iowa. All checks drawn upon the investment checking account require the signature of two authorized signatories. The operating funds are deposited in a separate checking account with a maximum of one-half of the monthly operating budget being transferred into the account at any one time. The director and the assistant directors of the Office of Professional Regulation are authorized to sign checks from that account up to a maximum of \$2,000.00, with checks over \$2,000.00 requiring the signature of two authorized signatories. A

\$200,000.00 dishonesty insurance policy covers the director, all employees of the Commission, and all Commission members.

For the fiscal year beginning July 1, 2016, the Court approved the attached operating budget, which was amended on November 15, 2016. *Attachment A.* The amendment was necessary due to unforeseen computer expenses related to the Office of Professional Regulations internal database and fee collection system. Apportionment of the additional expenses was made across the commissions which utilize the database and fee collection system.

COMPLIANCE REVIEWS

The Commission's audit staff conducts routine audits of all lawyers in active practice in Iowa and examines their trust accounts, with the goal of examining each trust account every three to four years. The fact that a routine examination is made does not indicate any violations are suspected on the part of the lawyer or lawyers involved. Cooperation by members of the bar continues to be excellent, and the majority of Iowa lawyers properly use their trust accounts.

During 2016, auditors employed by the Client Security Commission conducted trust account compliance examinations as shown in the following table. Also during 2016, the auditors reviewed accounts in which lawyers were serving as fiduciaries as shown in the table.

Trust Account Compliance Examinations	515
Number of Lawyers Subject to Compliance Examinations	1102
Fiduciary Account Examinations	81

These examinations encourage lawyers to maintain their trust accounts and

fiduciary accounts in accordance with the requirements of Iowa Rule of Professional Conduct 32:1.15 and chapter 45 of the Iowa Court Rules.

The Commission's staff has published an outline on trust account procedures and made it available to all Iowa lawyers on the Commission web page. In addition, the director and assistant directors of the Office of Professional Regulation periodically appear at continuing legal education events to discuss proper trust accounting procedures. Also the Commission auditors and staff are happy to share their knowledge and experience to assist any lawyers who have questions regarding trust account management.

Iowa was the first state to periodically examine lawyers' trust accounts and continues to be the leader in that field. It is the Commission's belief that routine examinations of lawyers' trust accounts help deter that small number of lawyers who might otherwise make use of the funds of others, and also help limit losses resulting from attorney diversion of client monies through early detection.

Dated: 16th of February, 2017.

CLIENT SECURITY COMMISSION OF
THE SUPREME COURT OF IOWA

Jennifer A. Clemens-Conlon Chair
JoAnn L. Barten, Vice Chair
Kenneth H. Boeke, Treasurer
Todd A. Geer
The Honorable Myron L. Gookin
Ann Powers
Joel D. Vos

By 
Jennifer A. Clemens-Conlon, Chair

CLIENT SECURITY COMMISSION

AMENDED FISCAL YEAR 2016-2017 BUDGET

OPERATING EXPENSES

Salary and Salary Expenses	
Director	\$31,314.18
Assistant Director	\$53,129.84
Auditors	\$129,300.00
Clerical - Bookkeeping	\$42,277.74
Vacation/Sick Leave Payout	\$2,531.01
Part-Time Data / Call Center Support	\$146.67
Employee Insurance	\$30,144.68
Deferred Compensation	\$1,380.00
FICA	\$19,790.50
IPERS	\$22,875.46
Travel Expenses - Director, Commissio	\$2,430.00
Travel Expenses - Auditor	\$27,000.00
Rent	\$8,126.00
Auditing	\$2,300.00
Telephone	\$1,809.00
Office Supplies	\$1,400.00
Printing	\$1,000.00
Postage	\$2,400.00
Copier Lease	\$1,200.00
Repairs & Maintenance	\$200.00
Employer Insurance	\$1,200.00
Unemployment Insurance	\$180.00
Banking Fees	\$700.00
Miscellaneous, Including Moving	\$1,000.00
Automation Support	\$600.00
Internet App. Maint. & Development	\$15,000.00
Internet Payment Charges	\$15,000.00
Payroll Processing	\$650.00
Staff Communications Support	\$1,800.00
TOTAL OPERATING EXPENSES	<u>\$416,885.08</u>
CAPITAL EXPENDITURES	\$300.00
TOTAL PROJECTED EXPENDITURES	<u>\$417,185.08</u>